

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday January 02, 2002

Division One

A091777 -- The People v. James Butler.

By the Court: The petition for rehearing is denied. Marchiano, Acting P.J.

A094220 -- Christopher L. Patane, et al. v. Toni Marie Gutto, et al.

By the Court: Appellants having requested oral argument in the above-referenced appeal, the opinion filed December 17, 2001 is hereby vacated. The matter is ordered calendared to be heard before Division 1 of this Court on January 24, 2002 at 1:30 p.m. at 350 McAllister Street, Fourth Floor, San Francisco, California 94102. The justices participating are Stein, Acting P.J., Swager, J. and Marchiano, J. Marchiano, Acting P.J.

Division Two

A092653 -- Mark Ferguson, et al. v. Friend finders, Inc., et al.

The lower court's ruling sustaining the demurrer without leave to amend as to Ferguson's first cause of action for negligence is affirmed. In all other respects, the judgment is reversed on this case is remanded to the trial court for further proceedings consistent with this opinion. Costs on appeal are awarded to Ferguson. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Certified for Partial Publication.)

Division Four

A092567 -- The People v. Carlos Chico.

By the Court: The opinion filed herein on December 21, 2001, is modified as follows: (See order.) This modification does not effect a change in the judgment. Reardon, Acting P.J. (Certified for Publication.)

Wednesday January 02, 2002 (continued)

Division Five

A091082 -- The People v. Troy William Thompson.

Order Modifying Opinion and Denying Rehearing. By the Court: It is ordered that the opinion filed herein on December 5, 2001, be modified as follows: (See order.) The petition for rehearing is denied. This modification does not effect a change in the judgment. Jones, P.J. (Not for Publication.)

Thursday, January 3, 2002

Division One

**A093737 -- In re Alexis M., a Person Coming Under the Juvenile Court
Law. Department of Children and Family Services v. Sherrie M.**

The jurisdictional and dispositional orders are affirmed. Stein, Acting P.J.
We Concur: Swager, J., Marchiano, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Thursday, January 3, ,2002

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness PJ., Parrilli J., and C. Turner, Deputy Clerk

A093146 Mary Freeze,
A093390 v.
 Lost Isle Partners,

Cause called. Attorney Joseph W. Klobas appearing for appellant and attorney Frederick J. Carr appearing for respondent. Counsel submitted the case on their briefs.

Justice McGuiness announced the absence of Justice Corrigan on the above case. Counsel waived her presence since they had no additional argument.

court adjourned

Friday, January 4, 2002

Division One

A095343 -- The People v. Phillip Kohler.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Two

A093351 -- Deanna Carol Carnes v. Gail E. Mitchell.

We affirm the judgment. Mitchell is awarded costs on appeal. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A095248 -- The People v. Alfredo Tapia Madrigal.

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

A093820 -- The People v. Mark Lee Gray.

The Court: The petition for rehearing is granted. McGuinness, P.J.

Friday, January 4, 2002 (continued)

Division Five

A096859/A096860 -- Jill H. et al. v. The Superior Court of San Mateo County; San Mateo County Human Services Agency, Children and Family Services, R.P.I.

The order to show cause is discharged, the temporary stay is lifted, and the petitions for extraordinary writ review are denied on their merits. (Cal.Const., art. VI, § 14; Cal. Rules of Court, rule 39.1(B)(o); *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Petitioners are barred in any subsequent appeal from making further challenges to the order setting a hearing under section 366.26. (§ 366.26 subd.(1).) Because the section 366.26 hearing was set for January 16, 2002, our decision is final as to this court immediately to allow the court to conduct that hearing as expeditiously as possible after the court has determined whether the dispositional order should be reinstated. (Cal. Rules of Court, rule 24(a).) Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

A095520 -- The People v. Dionna C. Winzer.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Monday, January 7, 2002

Division One

A091926 -- The People v. Richard Marcum Quilopras.

By the Court: The petition for rehearing is denied. Stein, Acting P. J.

Division Two

A097265 -- In re Terry Lee Montgomery, on Habeas Corpus

The petition for writ of habeas corpus is denied. Petitioner should first seek relief, if any, in the trial court. Haerle, Acting P. J.

Division Three

A091784 -- Joshua Jackson, a Minor, etc. v. Pacific Gas & Electric Company.

Order Modifying Opinion. The Court: The opinion filed herein on December 2001 is modified as follows: (See order.) There is no change in judgment.

McGuiness, P.J. (Certified for Partial Publication.)

Tuesday, January 8, 2002

Division One

A097244 -- The People of the State of California v. Florita Gutierrez.

By the Court: On the court's own motion, the appeal is dismissed because the challenged order is not appealable. Appellant purports to appeal an order filed October 23, 2001 denying her motion to set aside, on ineffective counsel grounds, her 1992 conviction and the 1997 expungement order. Appeal does not lie from an order denying a motion that was, in substance, a petition for writ of habeas. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7; *People v. Gallardo* (2000) 77 Cal.App.4th 971, 985-989.) Marchiano, Acting P.J.

A097321 -- The People of the State of California v. Danny A. Pimentel.

By the Court: On the court's own motion, the appeal is dismissed because the challenged order is not appealable. Appellant purports to appeal an order filed October 23, 2001 denying his motion to set aside, on ineffective counsel grounds. Appeal does not lie from an order denying a motion that was, in substance, a petition for writ of habeas corpus. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7; *People v. Gallardo* (2000) 77 Cal.App.4th 971, 985-989.) Marchiano, Acting P.J.

Division Two

A093078 -- John Bahl, et al. v. PJP International, LTD., et al.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A092363 -- Johnny King et al. v. R. Briggs Wood et al.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A092140 -- In re the Marriage of Kevin McEvoy and Leona McEvoy.

The order is reversed and the matter remanded for proceedings with the views expressed herein. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Tuesday, January 8, 2002 (continued)

A093127 -- Woodside Fire Protection District v. Ronald Grove, et al.

We affirm. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A092744 -- In re the Marriage of Marisa Christie and Alfred Chong.

Although it filed an opposition to Christie's motion to dismiss, appellant Samuel L. Boyd, P.C. does not, in fact, resist Christie's dismissal. In its opposition to the motion appellant acknowledges the settlement reached between itself and Christie, and expresses its concern that we not dismiss the other respondent to the appeal, Alfred Chong. Alfred Chong has not sought dismissal of the appeal, and will remain a party. Respondent Christie's motion is granted, and the appeal is ordered dismissed as to Christie. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A097372 -- Irma Torres v. The Superior Court of Solano County; Dixon Family Services, R.P.I.

By the Court: The petition for a writ of mandate, prohibition and/or certiorari and the related request for a stay are denied. Petitioner has failed to provide a record sufficient to enable informed appellate review. (See *Sherwood v. Superior Court* (1979) 24 Cal.3d 183, 186-187.) Moreover, writ review does not lie to resolve an issue as to the admissibility of evidence. (*People v. Municipal Court* (Ahnemann) (1974) 12 Cal.3d 658, 660-661; *Laurie S. v. Superior court* (1994) 26 Cal.App.4th 195, 203.) (McGuiness, P.J., Corrigan, J., & Parrilli, J. participating.) McGuiness, P.J.

Wednesday, January 9, 2002

Division One

A089978; A091120 -- Mattaniah Eytan v. Jonathan Wan.

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

**A093277 -- Bordell Joer'dan Smith v. Hopland Band of Pomo Indians,
et al.**

The judgment is reversed, and the matter is remanded to the trial court. Costs to appellant. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Certified for Publication.)

Division Three

A094634 -- The People v. Laura Ann Castanon.

Judgment affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

A093146/A093390 -- Mary Freeze v. Lost Isle Partners.

The judgment filed September 7, 2000 is reversed and the matter is remanded for a new trial on Freeze's general maritime claims. Lost Isle's appeal from the order filed November 8, 2000 is dismissed as moot. Freeze shall recover her costs on these appeals. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

A092952 -- In re the Marriage of Alexandria Hill and A. Justin Sterling.

The order is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Thursday, January 10, 2002

Division One

A093870 -- The People v. Twumasi Ankra Boateng.

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A096710 -- Sabrina E. v. The Superior Court of Del Norte County; Del Norte County Department of Social Services et al.

Because of the Department's disregard for the clear provisions of the ICWA, and the juvenile court's failure to insure compliance with it, the lives of Julia and Wayne must be placed on hold. We have previously issued our order staying the section 366.26 hearing, which was set for January 18, 2002. We notified the parties when we issued our order to show cause and set this cause for oral argument that we would determine it on the merits. (See Cal. Const., art. VI, § 14; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024; *Kowis v. Howard* (1992) 3 Cal.4th 888; § 366.26, subd. (I), precluding petitioner from challenging the orders terminating reunification services and setting the matter for a section 366.26 hearing in any subsequent appeal.) We now direct issuance of a peremptory writ of mandate commanding the Del Norte County Superior Court in *In re Julia E.* and *In re Wayne E.* (Case Nos. 00-6209 and 00-6210) to order the Del Norte County Department of Health and Social Services to immediately send notice of the pendency of the proceedings and of the right of intervention, by registered mail with return receipt requested, to the Secretary of the Bureau of Indian Affairs, and to continue to stay the section 366.26 hearing until the compliance with the Act's provisions. In all other respects, the orders of the juvenile court are affirmed, and the petition is denied on the merits. This opinion is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A095483 -- In re Justin G., a Person Coming Under the Juvenile Court Law. The People v. Justin G.

The judgment and disposition are affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Thursday, January 10, 2002 (continued)

A091663 -- The People v. Carlos D. Gabarrete.

The judgment of conviction is affirmed. The matter is remanded for resentencing in the light of the Attorney General's concession. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A094183, A095049 -- In re Robert P., a Person Coming Under the Juvenile Court Law. Humboldt County Department of Social Services v. Gwendolyn P.

The appeal is dismissed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A095510 -- County of San Mateo v. B.D. Florida et al.

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A096534 -- B.C. Leasco, L.P. et al. v. The Superior Court of Sonoma County; Cruz L. Galindo et al., R.P.I.

By the Court: Petitioners having notified this court that the case has settled, the petition for writ of prohibition/mandate/stay is dismissed as moot. Kline, P.J.

Thursday, January 10, 2002 (continued)

A094392 -- Rizalina Abellan v. Roseller Abellan.

The petition for writ of supersedeas is denied. Kline, P.J.

A097048 -- In re Brian Michael Eads, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Division Three

A091140, A092645, A093274 -- Aaron Johnson v. City of Menlo Park et al.

The orders appealed from are affirmed. Appeal No. A092645 is dismissed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A093776 -- G.A. "Skip Moore v. Hammond, Martin, Walsh & Smith, Insurance Brokers, Inc. et al.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Five

A093916/A092150 -- Amarjit Dandona et al. v. Cole & Cowan.

Insofar as it entitles respondent to attorney fees the judgment is reversed. In all other respects the judgment is affirmed. Parties to bear their own costs on appeal. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Friday, January 11, 2002

Division Three

A088431 -- The People v. Mary Steiner, et al.

By the Court: The petition for rehearing filed by respondent Teddy Tene is denied. McGuiness, P.J.

A095518 -- The People v. Stanley Williams.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A094075, A095269 -- In re Raymond C., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Services Agency v. Lori C.

The orders are affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

A092829/A093661 -- Alice J. Darone v. James M. Carry et al.

The judgment is affirmed. Costs are awarded to Cary and Kung. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

A091877 -- Brent Ferguson et al. v. Lieff, Cabraser, Heimann & Bernstein, LLP et al.

The order sustaining Lieff Cabraser's demurrer to appellants' fraud causes of action is affirmed. The summary judgment on the legal malpractice and breach of fiduciary causes of action is likewise affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Certified for Publication.)

A094324 -- The People v. David Winston Gainey.

The judgment of conviction is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Friday, January 11, 2002 (continued)

Division Five

A092436 -- The People v. Michael J. Matesky.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.
(Not for Publication.)

Monday, January 14, 2002

Division One

A093455 -- The People v. Allyn Hopkins.

A095674 -- In re Allyn Hopkins, on Habeas Corpus.

The order denying appellant's application for outpatient release is affirmed. The petition for habeas corpus is granted. The determination of the maximum term of commitment is vacated and the matter remanded to the trial court with directions to redetermine that maximum term. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Two

A090311 -- Rainer Joachim Faerber v. The Hyde Law Corporation

A090545 -- The Hyde Law Corporation et al. v. Rainer Joachim Faerber.

The judgment on the complaint is reversed. The judgment on the cross-complaint is affirmed. Faerber is awarded costs. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A092653 -- Mark Ferguson, et al. v. Friendfinders, Inc., et al.

By the Court: It is ordered that the opinion filed herein on January 2, 2002, be modified as follows: (See order.) This modification does not effect a change in the judgment. Kline, P.J.

Division Four

A095633 -- In re Alphonso J., a Person Coming Under the Juvenile Court Law. The People v. Alphonso J.

The order adjudicating appellant a ward of the court and placing him at CYA is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

Monday, January 14, 2002

Division Five

A094016 -- The People v. Robert Douglas Taylor.

The request for judicial notice is granted. The orders of the trial court are affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Tuesday, January 15, 200

Division One

A096029 - Conservatorship of the Person and Estate of Harry A. Lake County Public Guardian, as Conservator, etc. v. Harry A.

No error occurred in the proceedings establishing Mr. A.'s latest conservatorship or in the proceedings transferring his assets to the new conservatorship. All orders and judgments are affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A094856 -- The People v. Valerie Lessley.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A094276 -- The People v. Rogelio M. Lopez.

The judgment is modified by striking the trial court's order imposing attorney fees under section 987.8. In all other respects the judgment is affirmed. Marchiano, J. I Concur: Stein, Acting P.J. (See dissenting opinion by Swager, J.) (Not for Publication.)

A092910 -- The People v. Fred Anthony Grant.

We affirm. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Two

A097405 -- Eugene Schneider v. The Superior Court of San Francisco County; Myrna Sherman, Trustee, Alan Katz Clu Living Trust, R.P.I.

By the Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

A092530 -- James Solomon et al. v. William E. Gibson, et al.

We amend the judgment to add that Solomon and the Gibsons shall receive nothing on their separate claims against the Pacific Union parties. In all other respects, the judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, January 15, 2002

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Sepulveda, Acting P.J.; Kay, J.; and Marchiano, J. of Div. 1 on assignment; Channing Hoo, Deputy Clerk; CHP Officer Jason Keirse, Bailiff.

A094682 Original Joe's, Inc.
 v.
 Golden Eagle Insurance Corporation
Cause called. Robert Belshaw argued for appellant Original. Stacey L. Pratt argued for respondent. Cause submitted.

At this point, the Court reconstituted itself to include only Reardon, Acting P.J.; Sepulveda, J; and Kay, J.

A091275 People
 v.
 Paul Werner Issel
Cause called. Theresa Gibbons argued for appellant Issel. Martin S. Kay argued for respondent. Cause submitted.

A092383 Not About Water Committee et al.
 v.
 Solano County Board of Supervisors et al.
Cause called. Paul N. McCloskey, Jr. argued for appellants Not et al. James Laughlin argued for respondents. Cause submitted.

A094836 Shacrea Jones
 v.
 City and County of San Francisco et al.
Cause called. Gregory Haynes argued for appellant Jones. Andrew Cheng argued for respondents. Cause submitted.

The Court recessed at 10:39 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, January 15, 2002

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J., and Kay, J.; Channing Hoo, Deputy Clerk; CHP Officer Shelley Aldridge, Bailiff.

A091586 People
 v.
 Matthew Kozlowski et al.
Cause called. Joseph Shipp teleargued for appellant Kozlowski. Kathy Chavez teleargued for appellant Gatson. Michael Banister argued for respondent. Cause submitted.

A094729 Thomas Ginella et al.
 v.
 City and County of San Francisco et al.
Cause called. Frank Bacon argued for appellants Ginella et al. Martin L. Greenman argued for respondents. Cause submitted.

The Court adjourned at 2:16 p.m.

Wednesday, January 16, 2002

Division One

A095414 -- In re Christopher T., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Services Agency v. Teresa T.

The jurisdictional and dispositional orders are affirmed. Stein, Acting P.J.
We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Two

A097422 -- In re Timmy Ray Tyson, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, January 16, 2002

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: Corrigan J., Parrilli J., and C. Turner, Deputy Clerk.

Justice Corrigan announced the absence of Presiding Justice McGuiness. She stated all arguments are taped and Justice McGuiness would listen to all arguments. The panel would then confer before an opinion is issued. The court assumes that this will be satisfactory with counsel, unless counsel informs the court to the contrary when it comes time to argue.

A094488 Lori Summerfield,

v.

The Windsor Unified School District, et al.,

Cause called and argued by Robert James Henry, counsel for appellant, and Allen D. James, counsel for respondent. Cause ordered submitted.

A092878 C&G Contractors, Inc.,

A093679 v.

Golden State Developers, Inc., et al.,

Cause called and argued by Anthony Marsh, counsel for appellant, and Lance Russell, counsel for respondent. Cause ordered submitted.

A081492 The People,

v.

James Freddie Cavitt.

A088117 Robert Nathaniel Williams

Cause called and argued by Neil Jacob Rosenbaum, counsel for appellant Cavitt, and Paul Vincent Carroll, counsel for appellant Williams. Jeffrey M. Bryant argued for respondent. Cause ordered submitted.

A091323 Craig Linden,
 v.
 John S. Siamas, et al.,
 Cause called and argued by George Elliott McGill, counsel for
 appellant, and Michael Francis McCabe, counsel for respondent.
 Cause ordered submitted.

A088304 Rancho Solano Master Association,
A088514 v.
 Amos & Andrews, Inc.,
 Cause called and argued by James E. Allen, counsel for appellant, d
 and Chris Tarkington and Scott Finch, counsel for respondents.
 Cause ordered submitted.

court adjourned

Wednesday, January 16, 2002 (continued)

Division Five

A094916 -- Dennis Cole v. Benjamin Homes.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J.
(Not for Publication.)

**A094767 -- H. Lisa Dunn v. City of San Mateo; Nadine Buick et al.,
R.P.I. and Defendants.**

The judgment is vacated. Appellant to recover her costs on appeal.
Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A095492 -- In re Joshua F. et al., a Person Coming Under the Juvenile
Court Law. Lake County Department of Social Services v. Vernon F.**

The order of the juvenile court is affirmed. Stevens, J. We Concur: Jones,
P.J., Simons, J. (Not for Publication.)

Thursday, January 17, 2002

Division One

A095154 -- The People v. Charles Lee Grecian.

We find no arguable issues after a full review of the record and, accordingly, affirm the judgment. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A094936 -- The People v. Kevin Willaim Hendrix.

By the Court: Since this court's 12/21/01 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Stein, Acting P.J.

A094485 -- Russian River Watershed Protection Committee v. Russian River County Sanitation District, et al.

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

Division Two

A092020 -- The People v. Armando B. Ramirez.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Thursday, January 17, 2002 (continued)

A094213 -- The People v. Tara R. White.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J.,
Ruvolo, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Thursday, January 17, 2002

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P. J., Haerle, J., Ruvolo, J. and S. Graham, Deputy Clerk.

- A093415 Coldwell Banker Residential Real Estate
v.
Monica J. McGue
Cause called and argued by Leo LaRocca, counsel for appellant and Orly Derani, counsel for respondent. Cause ordered submitted.
- A094036 The People
v.
David Gene Hoover
Cause called and argued by Suzanna Gee, counsel for appellant and Michele Swanson, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A093294 John Hallgren, et al.
v.
Anthony Meyn, et al.
Cause called and argued by Samuel Holmes, counsel for appellants and Dana Beernink Simonds and J. Michael Fitzsimmons, counsel for respondents. Cause ordered submitted.
- A094851 Insurance Commissioner of State of California
v.
Golden Eagle Insurance Company
Jack Gindi
Cause called and argued by Daniel J. Kelly, counsel for appellant and (telephonically) by Christopher Wilson, counsel for respondent. Cause ordered submitted.

A094851 Insurance Commissioner of State of California
v.
Golden Eagle Insurance Company
Jack Gindi
Cause called and argued by Daniel J. Kelly, counsel for appellant and
(telephonically) by Christopher Wilson, counsel for respondent. Cause
ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Lambden,
J. and S. Graham, Deputy Clerk.

A093615 The People
v.
William August Hollingsworth
Cause called and argued by Hilda Scheib, counsel for appellant and
Adriano Hrvatin, Certified Law Student, counsel for respondent. Cause
ordered submitted.

A093292 The People
v.
Isaiah Laughlin
Cause called and argued by Eric Borgerson, counsel for appellant and Seth
Schalit, Deputy Attorney General, counsel for respondent. Cause ordered
submitted.

A094839 Howard Herships
v.
Mannington Mills, Inc.
Cause called and argued by Howard Herships, appellant in propria persona
and Christina Brinley, counsel for respondent. Cause ordered submitted.

A094755 Estate of Arthur Patrick Ford, Deceased
Terrold Bean
v.
John J. Ford, et al.
Cause called and argued by Patrick Sullivan, counsel for appellant and
Thomas J. Williams, counsel for respondent. Cause ordered submitted.

Court recessed until Friday, January 18, 2002 at 9:30 a.m.

Thursday, January 17, 2002 (continued)

Division Three

A090550 -- The People v. Mianta McKnight.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A097165 -- Richard Peterson et al. v. Jennie S. Corbett et al.

The appeal is dismissed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A096440 -- Tina D. v. The Superior Court of Lake County; Lake County Department of Social Services, R.P.I.

The petition is denied on the merits. (Cal. Rules of Court, rule 39.1B(o).) This decision is final immediately. (*Id.*, rule 24(a).) Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A094271 -- The People v. Robert Frost.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

A094836 -- Shacrea Jones v. City and County of San Francisco, et al.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

Friday, January 18, 2002

Division One

A092988 -- The People v. Jorge Arturo Gonzales.

The judgment of conviction is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A096588 -- Jeannette Garibaldi et al. v. Planned Parenthood Golden Gate, Real Party and Respondent.

The petition for writ of supersedeas/stay is denied. Kline, P.J.

A095155 -- The People v. Clyde W. Sperbeck.

The order appealed from is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A094106 -- Eleanor Trengali et al. v. Northern California Presbyterian Homes, Inc.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A097439 -- In re Richard Darnell Wallace, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Division Five

A094648 -- The People v. Elliott Randall Bennett.

The sentence is modified to reflect the upper term of seven years, and the trial court is directed to submit a corrected abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Friday, January 18, 2002 (continued)

A096645 -- Raymond Mardock et al. v. The Superior Court of Humboldt County; Mark Boyd, R.P.I.

By the Court: The alternative writ of mandate, having been complied with by respondent superior court's order of January 16, 2002, is discharged, and the petition is dismissed as moot. Jones, P.J.

A094008 -- The People v. Sandra Lee Wilkinson.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Tuesday, January 22, 2002

Division Two

A089070 -- David R. Olick v. Long & Levit, et al.

By the Court: The petition for rehearing is denied. Kline, P.J.

A097411 -- In re William Palmer, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. In the future, any petitions for a writ of habeas corpus challenging a decision of the Board of Prison Terms to deny parole should be filed in the superior court of the county in which petitioner was convicted and, thereafter, in the appellate district for the county in which petitioner was convicted. (See *In re Sena* (December 20, 2001, B153471) ___Cal.App.4th ___[2001 D.A.R. 13127].) Kline, P.J.

A095286 -- In re Estate of Al Russo, Deceased. Gene Austin Cain. v. Kym Jackson.

By the Court: The petition for rehearing is denied. Kline, P.J.

A095748 -- The People v. The Superior Court of Sonoma County; Randall Allen Chiado., R.P.I.

By the Court: Pending determination of the appeal in A095748, the trial in *People v. Randall Allen Chiado*, Sonoma County Superior Court No. SCR 30651, is temporarily stayed. The stay will dissolve upon issuance of the remittitur in the appeal unless otherwise ordered. Kline, P.J.

Division Three

A095837 -- The People v. Kenneth Lee Cherry.

We have independently reviewed the entire record in this case, and have found no errors, nor any issues requiring further briefing. The judgment and sentence are affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Tuesday, January 22, 2002 (continued)

A095089 -- In re Joseph F., a Person Coming Under the Juvenile Court Law. The People v. Joseph F.

The orders appealed from are affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A094729 -- Thomas J. Ginella et al. v. City and County of San Francisco.

The judgment of dismissal is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A091275 -- The People v. Paul Werner Issel.

The judgment is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

A094854 -- The People v. Phillip Robert Alvarez.

The order revoking probation in case numbers CR33295, CR34739 and CR36417 and judgment imposed are affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A094908 -- In re Emmitt L., a Person Coming Under the Juvenile Court Law. The People v. Emmitt L.

The orders of the juvenile court are affirmed, but the matter is remanded to the court for an express finding pursuant to section 702, as to whether counts 4,6, and 7 are felonies or misdemeanors. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Wednesday, January 23, 2002

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Marchiano, J.; N. Millner, Deputy Clerk, and CHP Officer T. Tam, Bailiff.

- A089166 The People,
 v.
 Kevin Tyrone Demings, et al.
Cause called and argued by Neil J. Rosenbaum, counsel for appellant, and Thomas Brady, counsel for respondent. Cause ordered submitted.
- A096224 Janelle Alioto,
 v.
 Superior Court of San Francisco County;
 Th People.
Cause called and argued by Scot Candell, counsel for petitioner, and Catherine A. Rivlin, counsel for real part in interest. Cause ordered submitted.
- A093082 Griffin Dix, et al.,
 v.
 Beretta U.S.A. Corp.
Cause called and argued by Robert C. Gebhardt, counsel for appellant, and Craig A. Livingston, counsel for respondents. Cause ordered submitted.
- A094961 Insurance Commissioner,
 v.
 Golden Eaagle Insurance Company;
 Brenda Dickson.
Cause called and argued by Jan Michael Weinberg, counsel for appellant, and Stacey Leigh Pratt, counsel for respondent. Cause ordered submitted.

A092749

Milea Tompkins,

v.

California Insurance Group.

Cause called and argued by Thomas F. Johnson, counsel for appellant, and Lance Orloff, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Wednesday, January 23, 2002

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Marchiano, J.; B. Robbins, Deputy Clerk; and CHP Officer D. Mendias, Bailiff.

- A093299 Terance Frazier,
 v.
 Fong & Fong, et al.
Cause called and argued by Christopher D.N. Hanson, counsel for appellant, and Brandy Cutting, counsel for respondents. Cause ordered submitted.
- A091306 Dale McAnally,
 v.
 Alaska Gasoline, et al.
Cause called and argued by Pritpaul Singh Sappal, counsel for appellant, and Martin T. Snyder, counsel for respondents. Cause ordered submitted.
- A094734 Fred C.T. Hsu,
 v
 Ji Kai Duan.
Cause called and argued by George E. Williamson, counsel for appellant, and Maximilian J.B. Hopkins, counsel for respondent. Cause ordered submitted.
- A096714 London Market Insurers,
 v.
 Superior Court of San Francisco County;
 Kaiser Aluminum and Chemical Corp.
Cause called and argued by Paul J. Killion, counsel for petitioner, and Lawrence A. Hobel, counsel for real party in interest. Cause ordered submitted.

Court recessed until Thursday, January 24, 2002 at 9:00 a.m.

Wednesday, January 23, 2002

Division Two

A092105 -- Yong Shao Ma et al. v. City and County of San Francisco.

The judgment below in favor of CCSF is reversed. The case is remanded to the trial court for further proceedings. Costs on appeal are awarded to appellants. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Certified for Publication.)

A095456 -- Bradley C. Mart v. Leland Severson.

The April 17 decree is reversed, and this case is remanded to the trial court for further proceedings consistent with this opinion. Costs on appeal are awarded to appellant. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Certified for Publication.)

A093236 & A093237 -- Gerald Pannone et al. v. City of Brisbane et al.

The judgment is reversed and the cause remanded for the purpose of restoring the action to the jurisdiction of the superior court (*Paul v. Milk Depots, Inc.*, *supra*, 62 Cal.2d at pp. 134-135), which shall dismiss the cause of action for injunctive relief as moot. In all other respects the judgment is affirmed. Costs shall be borne by plaintiffs. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Three

A096888 -- Frank H. v. The Superior Court of Contra Costa County; Contra Costa County Department of Social Services, R.P.I.

To the extent that the petition for extraordinary relief seeks a stay of the section 366.26 hearing, pursuant to rule 39.1B(p), it is denied. To the extent that the petition seeks reversal of the order setting a section 366.26 hearing, the petition is denied on its merits. (See Cal.Const., art VI; *Kowis, supra*, 3 Cal.4th at p. 894.) Because the section 366.26 hearing is set for February 19, 2002, our decision is final in this court immediately. (Rule 24(d).) McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Wednesday, January 23, 2002 (continued)

A091876 -- Lin Enterprises v. Club Mercury, Inc.

The judgment is affirmed. Each party shall bear its own costs on this appeal. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

A094784 -- The People v. Gary Lee Logan.

The order revoking and then reinstating probation under the modified terms is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

A095158 -- The People v. Steven Lee Manning.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Thursday, January 24, 2002

Division One

A094251 -- The People v. Lloyd Wayne Harrison.

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Three

A094903 -- In re Loren C., a Person Coming Under the Juvenile Court Law. The People v. Loren C.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A093820 -- The People v. Mark Lee Gray.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A096065 -- The People v. Michael E. Maness.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A095313 -- The People v. Tony Corbello Luchessi.

The order revoking probation and imposing appellant's previously stayed prison term is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Thursday, January 24, 2002 (continued)

A091644 -- Donald W. Marken et al. v. Franchise Tax Board.

The judgment of the superior court is reversed; the cause is remanded to that court for further proceedings consistent with this opinion, including resolution of the Board's California source defense as an alternative basis for taxpayers' liability and the challenged deficiency assessment; the cross-appeal challenging the trial court's refusal to award taxpayers' litigation costs is dismissed as moot. (See, e.g., *Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co.* (1996) 47 Cal.App.4th 464, 491-492.) The parties shall bear their own costs on appeal. Sepulveda, J. We Concur: Reardon, Acting P.J. Kay, J. (Not for Publication.)

A095667 -- In re Daniel P., a Person Coming Under the Juvenile Court Law. The People v. Daniel P.

The orders declaring the minor a ward of the juvenile court and placing him in a program for sexual offenders are affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, January 24, 2002

The Court reconvened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Simons, J.; N. Millner, Deputy Clerk; and CHP Officer D. Mendias, Bailiff.

A093578 Berkeley Unified School District,
 v.
 United National Insurance Company.
Cause called and argued by Blaise S. Curet, counsel for appellant, and Robert F. Curotto, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Simons left the bench and Justice Marchiano joined the bench and participated in the remainder of the session.

A091480 The People,
 v.
 Alex Abdul Baybury.
Cause called and argued by Valerie C. West, counsel for appellant, via teleconference, and Moona Nandi, counsel for respondent. Cause ordered submitted.

A092478 Lynch, Gilardi & Grummer,
 v
 Hodge Food Services, Inc., et al.
Cause called and argued by Elliot Bien, counsel for appellants, and Peter Dixon, counsel for respondent. Cause ordered submitted.

A093386 Eilina Chistov,
 v.
 R.W. Zukin Corp., et al.
Cause called and argued by Laureen Bethards, counsel for appellant, and Peter J. Linn, counsel for respondent. Cause ordered submitted.

A094769 Ricardo D. Ramirez,
 v.
 Doris White.
Cause called and argued by David McKim, counsel for appellant, and Carl Lipperberger, counsel for respondent. Cause ordered submitted.

A094026 Mark Watson, et al.,
 v.
 Financial Pacific Insurance.
Cause called and argued by Kelly Michael Walsh, via teleconference, counsel for appellants, and Kimberly Amick, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, January 24, 2002

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Marchiano, J.; B. Robbins, Deputy Clerk; and CHP Officer T. Tam, Bailiff.

- A092356 HIH Marine Insurance Services, Inc.,
 v.
 Gateway Freight Services, et al.
Cause called and argued by Paul Gary Sterling, counsel for appellant, and Richard C. Wootton, counsel for respondent. Cause ordered submitted.
- A095322 Elayne Hermann,
 v.
 Charles Stratton, D.D.S., Inc.
Cause called and argued by Patrick Carter, counsel for appellant, and Richard T. Bowles, counsel for respondent. Cause ordered submitted.
- A093346 County of Sonoma ex rel. Dorothy L. Hansen,
 v.
 Sutter Health, et al.
Cause called and argued by Daniel R. Bartley, counsel for appellant, and Richard E. Brandt, counsel for respondents. Cause ordered submitted.
- A094220 Christopher L. Patane, et al.,
 v.
 Toni Marie Gutto, et al.
Cause called and argued by Robert Machado, counsel for appellants, and Michael J. Hassen, counsel for respondent. Cause ordered submitted.

Court adjourned.

Friday, January 25, 2002

Division One

A094961 -- Harry W. Low, as Insurance Commissioner v. Golden Eagle Insurance Company; Brenda Dickson.

Based on the facts known prior to inception of the Golden Eagle policy, the law firm should have reasonably expected that its acts or omissions could lead to a claim or suit for purposes of the prior knowledge exclusion. The available facts at the time of the coverage decision conclusively negated any possibility of coverage. The claim was properly denied. The order of the trial court is affirmed.

Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A097536 -- Pauline Creasey v. The Superior Court of San Francisco County; Vodafone Group PLC et al.; R.P.I.

By the Court: The petition for writ of mandate/prohibition/stay is denied. Petitioner has a remedy at law by way of appeal. (Code Civ. Proc., § 904.1 subd.(a)(12).) Kline, P.J.

A097481 -- Mary Barton Marques et al. v. The Superior Court of Alameda County; Tony Marques, R.P.I.

By the Court: The petition for writ of mandate/stay is denied. Kline, P.J.

A094790 -- Susan Willey et al. v. William Oswald et al.

The judgment is reversed. On remand, the trial court is directed to allow the Willeys leave to amend their complaint to allege an implied-in-law dedication of a public easement. Costs on appeal to appellants. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Friday, January 25, 2002 (continued)

Division Three

A082929 -- Jana Livingston et al. v. Murray-Glass, Inc.

Assuming the truth of all properly pleaded facts in appellants' third amended complaint, as well as those that can be inferred from the complaint's allegations, we conclude the complaint's deficiencies can, in some respects, be cured by amendment. Accordingly, the trial court abused its discretion by sustaining the respondent's demurrer without leave to amend. The cause is reversed and remanded for further proceedings. Appellants shall recover their costs on appeal. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

A091854 -- The People v. Robert Valdez Pecina.

The restitution order and judgment are affirmed. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Monday, January 28, 2002

Division One

A094658 -- Chubb & Son, et al. v. Kathleen McDermott.

A094659 -- Chubb & Son, et al. v. Kathleen McDermott.

A094661 -- Chubb & Son, et al. v. Kathleen McDermott.

A094662 -- Chubb & Son, et al. v. Kathleen McDermott.

By the Court: The following four matters pertaining to restraining orders issued against appellant Kathleen McDermott pursuant to Code of Civil Procedure section 527.8 involve essentially the same facts, parties, arguments, record and legal issues. Consequently, A094658, A094659, A094661 and A094662 are hereby consolidated for purposes of oral argument and decision. Marchiano, P.J.

A093299 -- Terance Frazier v. Fong & Fong, et al.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A094734 -- Fred C. T. Hsu v. Ji Kai Duan.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A094895 -- The People v. Kenneth W. Mills.

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Three

A089217 & A086947 -- The People v. Dain Roy Birkley, et al.

By the Court: The petitions for rehearing filed by appellants Dante Bonavente and Dain Roy Birkley are denied. McGuiness, P.J.

A092480 -- Naquethia Stevenson v. Veterans Cab Company.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Monday, January 28, 2002

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J. and Sepulveda, J. (Each counsel earlier waived Presiding Justice Kay's presence on the bench.); Channing Hoo, Deputy Clerk; Guardsmark Officer Rafael Chavez, Bailiff.

- A093695 Jan Soehngen
 v.
 A.L. Susini et al.
Cause called. John Screiber argued for appellant Soehngen. David M. Miller argued for respondents. Cause submitted.
- A092582 People
 v.
 Fernando Bravo
Cause called. Renee Torres argued for appellant Bravo. Violet M. Lee argued for respondent. Cause submitted.
- A093509 Pacific Gas & Electric Co.
 v.
 Superior Court, Sonoma County
 John Emery et al.
Cause called. William Stern argued for petitioner Pacific. Barri Kaplan Boncepart argued for real parties in interest. Cause submitted.
- A096654 Michelle Flink
 v.
 Pacific Specialty Insurance Company
Cause called. Gary Flynn argued for appellant Flink. Raymond Coates argued for respondent. Cause submitted.

The Court adjourned at 10:25 a.m.

Monday, January 28, 2002 (continued)

Division Five

A093472 -- The People v. Mark Charles Daigre.

As to the three counts of forcible sodomy (counts 2, 3 & 4), and two counts of forcible oral copulation (counts 10 & 11), the judgment of conviction is reversed. As to the remaining counts, the matter is remanded for resentencing of defendant consistent with this opinion. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Tuesday, January 29, 2002

Division One

A091480 -- The People v. Alex Abdul Baybury.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Two

A094965 -- Patricia Bonavito v. Jitu Somaya.

The judgment is affirmed. Somaya is awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A094851 -- Insurance Commissioner of the State of California v. Golden Eagle Insurance Company; Jack Gindi, Individually and as Trustee of JRG Trust No. 219.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Division Three

A094691 -- The People v. Alfred Lyman Guevara.

The judgment is affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

Wednesday, January 30, 2002

Division One

A096224 - Janelle Alioto v. The Superior Court of San Francisco County; The People, R.P.I.

By the Court:* The alternative writ is therefore discharged, and the petition for writ of mandate is denied. This opinion is final as to this court immediately. (Cal Rules of Court, rule 24 (d).)

*Before Stein, Acting P.J., Swager, J., and Marchiano, J.

A093386 -- Eilina Chistov v. Harry Miller et al.

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A094220 -- Toni Gutto et al. v. Christopher Patane et al.

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A092478 -- Lynch, Gilardi & Grummer v. Hodge Food Services, Inc., et al.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A094769 -- Ricardo D. Ramirez v. Doris White.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A093346 -- County of Sonoma ex rel. Dorothy L. Hansen v. Sutter Health et al.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Wednesday, January 30, 2002 (continued)

A092651 -- Vacaville Quail Run v. Gable Plastics, Inc.

The matter is remanded for consideration of the appropriate amount of credits for all of the challenged settlements. Appellant is entitled to costs on appeal. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A091670 -- The People v. Charles Anthony Williams.

Our review of the record reveals that the appellant's name is misspelled on the abstract of judgment. The trial court is directed to prepare an amended abstract showing appellant's correct name. The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Two

A097592 -- In re Ricky Garcia, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A094839 -- Howard Hershops v. Mannington Mills, Inc., et al.

The judgment is affirmed. Respondents shall recover their costs in connection with this appeal. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A092597 -- The People v. William Holingsworth.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A096423 -- Regents of the University of California, et al. v. The Superior Court of Alameda County; Jonathan Rui, R.P.I.

Let a peremptory writ of mandate issue directing the superior court to vacate its order overruling petitioners' demurrer to the fourth cause of action and to enter a new order sustaining the demurrer to said cause of action without leave to amend. Costs are awarded to petitioners. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Wednesday, January 30, 2002 (continued)

A097577 -- In re Maurice Ruffin, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A091881 -- Denise Salerno v. David Kennedy Tudor.

The judgment is affirmed. Tudor is awarded costs. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A096930 -- Adam A. Schwartz v. The Superior Court of Alameda County; Visa International Corp. et al. R.P.I.

By the Court: The petition for writ of mandate is denied. Kline, P.J.

Division Three

A093679 -- C&G Contractors, Inc. v. Golden State Developers, Inc. et al.

The order awarding costs of \$10,173.53 is affirmed. Appellants to bear the costs of this appeal. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

A092878 -- C&G Contractors, Inc. v. Golden State Developers, Inc. et al.

The orders denying appellant's motion for attorney fees and granting respondents' motion to strike attorney fees are reversed. The cause is remanded for the trial court to determine the reasonableness of attorney fees requested and the amount of fees to be awarded. Appellant shall recover costs of the appeal. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

A094554 -- The People v. Antonio Cornelio.

The judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Wednesday, January 30, 2002 (continued)

A095012 -- Evelyn Denise Dunn v. Eric Davies.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A095834 -- Donald Nemir v. Bank of America, N.A., et al.

The appeal is dismissed. The parties are to bear their own costs on appeal. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A092859 -- Petrina Wielgos v. Jerry Bale et al.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A096654 -- Michelle Flink v. Pacific Specialty Insurance Company.

The judgment is affirmed. Costs are awarded to respondent. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A093707 -- The People v. Lamar Freeman Johnson.

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A095519 -- The People v. Michael James McClure.

Judgment affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Wednesday, January 30, 2002 (continued)

Division Five

A096103 -- In re Jason A., a Person Coming Under the Juvenile Court Law. The People v. Jason A.

The order adjudicating appellant a continued ward of the court pursuant to Welfare and Institutions Code section 602 and placing him at Camp Wilmont Sweeney is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Thursday, January 31, 2002

Division One

A095048 -- In re Jessica B., a Person Coming Under the Juvenile Court Law. The People v. Jessica B.

Accordingly, gang condition number 1 is modified to add the following definition of the term gang: “The term ‘gang’ means a ‘criminal street gang’ as defined in Penal Code section 186.22, subdivisions (e) and (f).” Gang condition number 3 is modified to read: “Not wear any known or identified gang associated clothing or emblems.” Gang condition number 4 is modified to read: “Not possess any known or identified gang related paraphernalia, including, but not limited to gang graffiti, symbols, photographs, members rosters or other gang writings, and publications.” Gang condition number 5 is modified to read: “Not acquire any tattoos, either permanent or temporary.” In all other respects the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A096455 -- The People v. Anthony Joseph Morrow.

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A096937 -- In re Alexandria A., a Person Coming Under the Juvenile Court Law. Cheree A. v. San Mateo County Superior Court, Acting as a Juvenile Court; San Mateo County Department of Social Services, R.P.I.

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888.) Petitioner is barred in any subsequent appeal from making further challenges to the order terminating reunification services and setting a hearing under section 366.26 (See § 366.26, subs. (b)(1) & (b)(2).) Since the permanency planning hearing is set for March 5, 2002, this opinion is final as to this court forthwith. (Rule 24 (d).) Ruvalo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Thursday, January 31, 2002 (continued)

A095270 -- In re Joyce H., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Janean S.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A094155 -- Ken Moon v. Guardian Postacute Services, Inc.

We affirm the judgment. Guardian is awarded costs on appeal. Lambden, J. I Concur: Haerle, Acting P.J. (See dissenting opinion by Ruvolo, J.) (Certified for Publication.)

A090842 -- The People v. Randy Mouton, et al.

The judgment is affirmed. Kline, P.J. (See concurring opinion by Haerle, J., Ruvolo, J.) (Not for Publication.)

A095597 -- The People v. Eric Allen Taylor.

The order revoking appellant's probation and the judgment imposed are affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Division Three

A094708 -- The People v. Jesse James.

The order denying appellant's motion to suppress was entered in error. Because appellant's plea of no contest and the judgment entered thereafter were based on that error, the judgment must be, and accordingly is, reversed. (See *People v. Miller* (1983) 33 Cal.3d 545, 549-556.) McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A091323 -- Craig Linden v. John S. Siamas et al.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Thursday, January 31, 2002 (continued)

A095509 -- In re Ampelia P. and Faviola P., a Person Coming Under the Juvenile Court Law. Social Services Agency v. Angelica P.

The orders of juvenile court are affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

A093147 -- In re Jason S., a Person Coming Under the Juvenile Court Law. The People v. Jason S.

The portion of the dispositional order of October 17, 2000, in which the court purported to impose a commitment to CYA not to exceed 10 years and stayed that commitment, is reversed. Our decision has no effect on the court's choice to have appellant screened for admission to Rites of Passage. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Thursday, January 31, 2002 (continued)

A092923 -- The People v. Albert P. Storer.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A094488 -- Lori Summerfield v. Windsor Unified School Dist., et al.

The judgment is reversed. The District shall recover costs of the appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Certified for Publication.)

Division Four

A092383 -- Not about Water Committee et al. v. Solano County Board of Supervisors et al.

The judgment of the superior court is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Certified for Publication.)

A095497 -- In re Diedreann S., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Angela L.

The order of the juvenile court terminating appellant's parental rights with respect to Diedreann S. is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

A096050 -- The People v. James Robert Weiss.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)